

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

**2211 UNITED STATES COURTHOUSE
75 SPRING STREET, SW
ATLANTA, GEORGIA 30303-3361**

JAMES N. HATTEN
DISTRICT COURT EXECUTIVE
AND CLERK OF COURT

DOCKETING SECTION
404-215-1655

February 10, 2011

United States Court of Appeals
11th Circuit
56 Forsyth Street, NW
Atlanta, Georgia 30303

USDC Civil Action No. 1:09-cv-2700-JEC

USCA No. 11-10314-HH

Re: *Cloys Haynes, et al. v. Cyberonics, Inc.*

CERTIFICATE OF READINESS OF RECORD ON APPEAL

Pursuant to Fed.R.App.P. 11(c), the Clerk of the District Court for the Northern District of Georgia hereby certifies that, as shown on the enclosed index, the record is complete for the purposes of this appeal. The record (including the transcript or parts thereof designated for inclusion and all necessary exhibits) consists of:

3 **Volume(s) of pleadings**

 Volume(s) of depositions

 Volume(s) of transcripts

 Volume(s) of exhibits

 Other:

Sincerely,

James N. Hatten
District Court Executive
and Clerk of Court

By: /s/ Kimberly Carter
Deputy Clerk

Enclosures

4months, APPEAL, SUBMDJ

**U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:09-cv-02700-JEC
Internal Use Only**

**ATTEST: A TRUE COPY
CERTIFIED THIS**

FEB 10 2011

James N. Hatten, Clerk
By: *KA* Deputy Clerk

Haynes et al v. Cyberonics, Inc.
Assigned to: Judge Julie E. Carnes
Case in other court: State Court of Gwinnett County,
09C149831
USCA - 11th Circuit., 11-10314-HH
Cause: 28:1441 Petition for Removal- Product Liability

Date Filed: 09/30/2009
Jury Demand: Defendant
Nature of Suit: 365 Personal Inj. Prod.
Liability
Jurisdiction: Diversity

Plaintiff**Cloys Haynes**

represented by **Willis B. Green , III**
Law Offices of W. Bryant Green, III
P.C.
Suite 4100
303 Peachtree Street
Atlanta, GA 30308
404-522-5330
Email: bulldog2@mindspring.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff**Darlene Haynes**

represented by **Willis B. Green , III**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**Cyberonics, Inc.**

represented by **Zoe Ileana Martinez**
Thompson Hine LLP-GA
One Atlantic Center, Suite 2200
1201 West Peachtree Street, N.W.
Atlanta, GA 30309-3449
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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/30/2009 <i>Bog. Vol. 1</i>	(1)	NOTICE OF REMOVAL with COMPLAINT. (Filing fee \$ 350 receipt number 16784), filed by Cyberonics, Inc.. (Attachments: # <u>1</u> Civil Cover Sheet)(tcc) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 09/30/2009)
09/30/2009	(2)	ANSWER to <u>1</u> NOTICE OF REMOVAL by Cyberonics, Inc.. Discovery ends on 3/1/2010.(tcc) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 09/30/2009)
12/22/2009	(3)	Joint Certificate of Interested Persons by Cyberonics, Inc.. (Martinez, Zoe) (Entered: 12/22/2009)
12/22/2009	(4)	Joint PRELIMINARY REPORT AND DISCOVERY PLAN filed by Cyberonics, Inc.. (Martinez, Zoe) (Entered: 12/22/2009)
03/01/2010	(5)	Application for Leave of Absence for the following date(s): May 13, 2010 through and including May 31, 2010, by Zoe Ileana Martinez. (Martinez, Zoe) (Entered: 03/01/2010)
03/01/2010	(6)	Joint MOTION for Extension of Time to Complete Discovery with Brief In Support by Cyberonics, Inc.. (Attachments: # <u>1</u> Brief in Support of Joint Motion to Extend Discovery Period, # <u>2</u> Text of Proposed Order) (Martinez, Zoe) (Entered: 03/01/2010)
03/03/2010		MINUTE ORDER (by docket entry only) APPROVING <u>5</u> Request for Leave of Absence filed by Z. Ileana Martinez for the dates of May 13-31, 2010, by direction of the Court on March 3, 2010. Counsel is expected to comply timely with discovery obligations. Further, should any pleading become due during this period, counsel will be expected to file a motion for extension of time as to that particular pleading, should counsel wish any extension. (ddm) (Entered: 03/03/2010)
03/03/2010	(7)	ORDER granting <u>6</u> Motion for Extension of Time to Extend Discovery Period. IT IS HEREBY ORDERED that the Joint Motion to Extend Discovery Period for a period of (6) months, to and including August 31,

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		2010, is GRANTED. Signed by Judge Julie E. Carnes on 03/03/10. (fap) (Entered: 03/03/2010)
03/16/2010	(8)	First MOTION to Amend <i>Complaint</i> with Brief In Support by Cloys Haynes, Darlene Haynes. (Green, Willis) (Entered: 03/16/2010)
04/16/2010		Submission of <u>8</u> First MOTION to Amend <i>Complaint</i> , submitted to District Judge Julie E. Carnes. (fap) (Entered: 04/16/2010)
04/20/2010	(9)	ORDER granting <u>8</u> Motion to Amend Complaint as unopposed. The Clerk is directed to file the plaintiff's attached Amended Complaint as of the date of this Order. Signed by Judge Julie E. Carnes on 04/20/10. (fap) (Entered: 04/20/2010)
04/20/2010	(10)	AMENDED COMPLAINT against Cyberonics, Inc., filed by Cloys Haynes, Darlene Haynes.(fap) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 04/20/2010)
05/04/2010	(11)	ANSWER to <u>10</u> Amended Complaint by Cyberonics, Inc..(Suson, Leslie) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 05/04/2010)
08/16/2010	(12)	NOTICE to Take Deposition of Darlene Haynes filed by Cyberonics, Inc. (Martinez, Zoe) (Entered: 08/16/2010)
08/16/2010	(13)	NOTICE to Take Deposition of Cloys Haynes filed by Cyberonics, Inc. (Martinez, Zoe) (Entered: 08/16/2010)
08/17/2010	(14)	CERTIFICATE OF SERVICE of <i>Discovery</i> by Cyberonics, Inc..(Martinez, Zoe) (Entered: 08/17/2010)
08/19/2010	(15)	NOTICE to Take Deposition of Joseph Zarge, MD filed by Cyberonics, Inc. (Attachments: # <u>1</u> Exhibit Subpoena for Deposition)(Martinez, Zoe) (Entered: 08/19/2010)
08/20/2010	(16)	Initial Disclosures by Cyberonics, Inc..(Martinez, Zoe) (Entered: 08/20/2010)
08/26/2010	(17)	NOTICE to Take Deposition of Custodian of Cyberonics Vagus Nerve Stimulation System Explanted from Cloys Haynes on November 30, 2007 filed by Cyberonics, Inc. (Martinez, Zoe) (Entered: 08/26/2010)
08/26/2010	(18)	NOTICE to Take Deposition of Donald Sears, MD filed by Cyberonics, Inc. (Martinez, Zoe) (Entered: 08/26/2010)
08/27/2010	(19)	NOTICE to Take Deposition of Cyberonics, Inc filed by Cloys Haynes, Darlene Haynes (Green, Willis) (Entered: 08/27/2010)
08/27/2010	(20)	DISCOVERY FILED IN VIOLATION OF LOCAL RULE Request to File Original Discovery <i>Interrogatories</i> by Cloys Haynes, Darlene Haynes. (Green, Willis) Modified on 8/30/2010 (fap). (Entered: 08/27/2010)

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08/27/2010	(21)	MOTION to Dismiss <i>Without Prejudice</i> , MOTION to Stay <i>Discovery</i> , MOTION for Extension of Time to Complete Discovery <i>In the Alternative</i> by Cloys Haynes, Darlene Haynes. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Statement of Material Facts)(Green, Willis) (Entered: 08/27/2010)
08/31/2010 <i>End Vol. 1</i>	(22)	CERTIFICATE OF SERVICE <i>of Discovery</i> by Cyberonics, Inc..(Martinez, Zoe) (Entered: 08/31/2010)
09/13/2010 <i>Req. Vol. 2</i>	(23)	MOTION for Summary Judgment with Brief In Support by Cyberonics, Inc.. (Attachments: # <u>1</u> Brief Defendant Cyberonics, Inc.'s Brief in Support of its Motion for Summary Judgment, # <u>2</u> Statement of Material Facts Defendant Cyberonics, Inc.'s Statement of Undisputed Material Facts Pursuant to Local Rule 56.1 in Support of Its Motion for Summary Judgment, # <u>3</u> Exhibit A, # <u>4</u> Exhibit B, # <u>5</u> Exhibit C, # <u>6</u> Exhibit D, # <u>7</u> Exhibit E, # <u>8</u> Exhibit F, # <u>9</u> Exhibit G)(Martinez, Zoe) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 09/13/2010)
09/13/2010	(24)	OBJECTION in Opposition re <u>21</u> MOTION to Dismiss <i>Without Prejudice</i> MOTION to Stay <i>Discovery</i> MOTION for Extension of Time to Complete Discovery <i>In the Alternative</i> filed by Cyberonics, Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Martinez, Zoe) Modified on 9/14/2010 to accurately reflect e-filed pleading. (fap). (Entered: 09/13/2010)
09/27/2010	(25)	REPLY to Response to Motion re <u>21</u> MOTION to Dismiss <i>Without Prejudice</i> MOTION to Stay <i>Discovery</i> MOTION for Extension of Time to Complete Discovery <i>In the Alternative</i> filed by Cloys Haynes, Darlene Haynes. (Green, Willis) (Entered: 09/27/2010)
09/28/2010	(26)	CERTIFICATE OF SERVICE <i>of Discovery Pursuant to Rule 5.4</i> by Cyberonics, Inc..(Martinez, Zoe) (Entered: 09/28/2010)
10/20/2010		Submission of <u>21</u> MOTION to Dismiss <i>Without Prejudice</i> MOTION to Stay <i>Discovery</i> MOTION for Extension of Time to Complete Discovery <i>In the Alternative</i> , <u>23</u> MOTION for Summary Judgment, submitted to District Judge Julie E. Carnes. (fap) (Entered: 10/20/2010)
12/20/2010	(27)	ORDER denying <u>21</u> Plaintiffs' Motion to Dismiss, or alternatively, Motion for Extension of Time to Complete Discovery. Plaintiff shall respond to defendant's Motion for Summary Judgment <u>23</u> by January 28, 2011. Signed by Judge Julie E. Carnes on 12/20/10. (ddm) (Entered: 12/20/2010)
12/22/2010		Submission of <u>23</u> MOTION for Summary Judgment, submitted to District Judge Julie E. Carnes. (FILE IN CHAMBERS) (fap) (Entered: 12/22/2010)
01/18/2011	(28)	NOTICE OF APPEAL as to <u>27</u> Order on Motion to Dismiss, Order on Motion to Stay, Order on Motion for Extension of Time to Complete

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		Discovery,,, by Cloys Haynes, Darlene Haynes. Filing fee \$ 455, receipt number 113E-3089483. Transcript Order Form due on 2/1/2011 (Attachments: # <u>1</u> Exhibit Order being appealed)(Green, Willis) (Entered: 01/18/2011)
01/20/2011	(29)	Transmission of Certified Copy of Notice of Appeal, Order and Docket Sheet to US Court of Appeals re: <u>28</u> Notice of Appeal. (kac) (Entered: 01/20/2011)
01/28/2011	(30)	AFFIDAVIT in Opposition re <u>23</u> MOTION for Summary Judgment <i>Union General Hospital Certified Records</i> filed by Cloys Haynes, Darlene Haynes. (Green, Willis) (Entered: 01/28/2011)
01/28/2011	(31)	AFFIDAVIT in Opposition re <u>23</u> MOTION for Summary Judgment <i>Dr. Kennedy Certified Medical Records</i> filed by Cloys Haynes, Darlene Haynes. (Attachments: # <u>1</u> Affidavit Dr. Kennedy Cert. Med Records, # <u>2</u> Affidavit Dr. Kennedy Cert. Med Records, # <u>3</u> Affidavit Dr. Kennedy Cert. Med Records)(Green, Willis) (Entered: 01/28/2011)
01/28/2011	(32)	AFFIDAVIT in Opposition re <u>23</u> MOTION for Summary Judgment <i>St. Josephs Hospital Certified Records</i> filed by Cloys Haynes, Darlene Haynes. (Attachments: # <u>1</u> Affidavit St. Josephs Hospital Certified Records, # <u>2</u> Affidavit St. Josephs Hospital Certified Records, # <u>3</u> Affidavit St. Josephs Hospital Certified Records)(Green, Willis) (Entered: 01/28/2011)
01/28/2011	(33)	<i>End Vol. 3</i> AFFIDAVIT in Opposition re <u>23</u> MOTION for Summary Judgment <i>Affidavit of W. Bryant Green</i> filed by Cloys Haynes, Darlene Haynes. (Green, Willis) (Entered: 01/28/2011)
01/28/2011	(34)	AFFIDAVIT in Opposition re <u>23</u> MOTION for Summary Judgment <i>Affidavit of Dr. Phillip R. Kennedy, MD</i> filed by Cloys Haynes, Darlene Haynes. (Green, Willis) (Entered: 01/28/2011)
01/28/2011	(35)	NOTICE Of Filing notice of filing affidavits and certified medical records by Cloys Haynes, Darlene Haynes (Green, Willis) (Entered: 01/28/2011)
01/28/2011	(36)	RESPONSE in Opposition re <u>23</u> MOTION for Summary Judgment <i>Plaintiffs' Breif In Opposition</i> filed by Cloys Haynes, Darlene Haynes. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Exhibit 2, # <u>3</u> Exhibit Exhibit 3, # <u>4</u> Exhibit Exhibit 4, # <u>5</u> Exhibit Exhibit 5, # <u>6</u> Exhibit Exhibit 6, # <u>7</u> Exhibit Exhibit 7, # <u>8</u> Exhibit Exhibit 8)(Green, Willis) (Entered: 01/28/2011)
02/01/2011	(37)	<i>End Vol. 3</i> USCA Acknowledgment of <u>28</u> Notice of Appeal filed by Cloys Haynes, Darlene Haynes. CaseAppealed to USCA - 11th Circuit. USCA Case Number 11-10314-HH. (kac) (Entered: 02/03/2011)
02/10/2011		CERTIFICATE OF READINESS of Record on Appeal re: <u>28</u> Notice of Appeal filed by Cloys Haynes, Darlene Haynes. CaseAppealed to USCA - 11th Circuit. USCA Case Number 11-10314-HH. (kac) (Entered: 02/10/2011)

